

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**SPECIAL CIVIL APPLICATION No. 2811 of 1995****For Approval and Signature:****HONOURABLE MR.JUSTICE R.S.GARG**

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1 Whether Reporters of Local Papers may be allowed
to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy
of the judgment ?

4 Whether this case involves a substantial question
of law as to the interpretation of the
constitution of India, 1950 or any order made
thereunder ?

5 Whether it is to be circulated to the civil
judge ?

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SAYAJI INDUSTRIES LTD - Petitioner(s)**Versus****TG MATHEW - Respondent(s)**

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Appearance :

MR DEVANG NANAVATI for Petitioner(s) : 1,

MR UT MISHRA for Respondent(s) : 1,

MR IM PANDYA AGP for Respondent(s) : 2 - 3.

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CORAM : HONOURABLE MR.JUSTICE R.S.GARG**Date : 17/07/2007****ORAL JUDGMENT**

1. Mr.Devang Nanavati, learned counsel for the petitioner,
Mr.U.T. Mishra, learned counsel for the respondent No.1
and Mr.I.M. Pandya, learned Assistant Government
Pleader for the respondent Nos. 2 and 3.

2. The employer, being aggrieved by the award dtd.14/2/1995 made by the learned Labour Court, Ahmedabad in Reference (LCA) No. 105 of 1987, is before this Court with a submission that the learned court below was unjustified in directing reinstatement of respondent workman simply on the ground that he had worked 14 days in addition to his probation period.
3. Short facts necessary for disposal of the present writ application are that the petitioner was appointed vide order dtd.7/8/1985, he joined the service on 12/8/1985 and continued to work for a period of one year. On 11/8/1986, an order terminating the probation was issued, but, however, the same could be served upon the respondent workman on 25/8/1986. Being aggrieved by the termination, the workman filed the Reference and submitted to the Labour Court that as he had completed 14 days in excess of the probation period, it would amount to automatic confirmation. The employer appeared before the Court and raised various pleas including a submission that additional work beyond the probation period would not lead to automatic confirmation and present is a case where order terminating the probation, was issued on 11/8/1986 but

could be served upon the other-side on 25/8/1986.

4. After recording evidence and hearing the parties, learned Labour Court observed that the order dtd.11/8/1986 cannot be taken to be a genuine order, because, either on that day or on 25/8/1986 or on any other day, wages were not paid to the workman and wages came to be paid to the workman almost after about one month. The learned court below ultimately held that if a workman had worked beyond the probation period, he will be deemed to be confirmed on the post.
5. Mr.Nanavati, learned counsel for the petitioner, placing reliance upon the judgement of the Apex Court in the matter of Registrar of Gujarat, Vs. C.G. Sharma, (2005) 1 SCC 132 submitted that automatic confirmation, after the expiry of the period of probation, cannot be claimed as a right.
6. Mr.U.T. Sharma, learned counsel for the respondent, on the other hand, submitted that the court below was absolutely justified in making the award in favour of the respondent workman.
7. In the matter of Registrar (supra), the Supreme Court had observed that automatic confirmation after the expiry of period of probation cannot be claimed as a right, when

the relevant rules require the work being found to be satisfactory and existence of vacancy. The Supreme Court also observed and it is the settled law that in cases of confirmation on completion of probation period, application of mind is required and there has to be positive and specific order that trainee or the workman had completed the probation satisfactorily and under the circumstances, he is entitled to be confirmed on the post.

8. In the present case from the notice dtd.11/8/1986 alleged to be served upon the workman on 25/8/1986, it would clearly appear that within a period of one year from the date of appointment, the employer had recorded a positive finding that neither the probation was required to be extended nor the workman was required to be confirmed. The order dtd.11/8/1986 cannot be said to be antedated order, therefore, the right of the workman would be decided as those existed on 11/8/1986. The service of the order or payment of the salary for the extra period of work, in fact, would not decide the issue that the workman was consciously allowed to cross the period of probation and thus, this inaction or non-action on the part of the establishment amounts to confirmation of the services.

9. Learned court below was absolutely unjustified in directing reinstatement of the respondent workman.

10. The petition deserves to and is accordingly allowed. The impugned award made by the learned court below is hereby set aside and quashed. No costs.

(R.S. GARG, J.)

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